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 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12 PING JIANG,) No. C 07-3909 CRB
 13 Plaintiff,)
 14 v.) DEFENDANTS' RESPONSE IN
 15 MICHAEL CHERTOFF, Secretary,) SUPPORT OF EX PARTE MOTION
 Department of Homeland Security;) PURSUANT TO FED. R. CIV. P. 56(f),
 16 ROBERT S. MUELLER, Director of the)
 Federal Bureau of Investigation,)
 17 Defendants.)
 18 _____)

19 I. INTRODUCTION

20 Plaintiff opposes Defendants' Rule 56(f) Motion, arguing that his Motion for Summary
 21 Judgment is not premature. He suggests that the facts of the case at hand are simple, and that
 22 accordingly, Defendants have had sufficient time in the past six weeks to investigate his claims.
 23 Plaintiff's arguments are without merit. While the facts may appear simple to him, Defendants
 24 simply have not been accorded sufficient time to investigate his claims, and should not be forced to
 25 defend themselves two weeks prior to the date an answer is due.

26 II. ANALYSIS

27 Plaintiff cites several cases from this District in support of his argument that relief should
 28 be granted solely on the length of delay. In particular, he cites Gelfer v. Chertoff, No. 06-06724

1 WHA, 2007 WL 902382 (N.D. Cal. Mar. 22, 2007); however, that case does not support his
 2 argument. Judge Alsup specifically noted that it was inappropriate, at the dismissal stage, to decide
 3 whether the delay was unreasonable. 2007 WL 902382, at *2. The other two cases Plaintiff cites
 4 involved much lengthier periods of delay. Singh v. Still, 470 F. Supp. 2d 1064 (N.D. Cal. 2007);
 5 Aboushaban v. Mueller, No. C 06-1280 BZ, 2006 WL 3041086 (N.D. Cal. Oct. 24, 2006). Here,
 6 Defendants must be allowed sufficient time to investigate the nature of the alleged delay.

7 Defendants have clearly indicated, through the declaration of undersigned counsel, that they
 8 require additional time in order to fully defend themselves in this action. Plaintiff also suggests that
 9 "Defendants have failed to indicate that they are without fault in creating the crisis that requires ex
 10 parte relief." Undersigned counsel learned that Plaintiff's counsel intended to file motions for
 11 summary judgment on a number of cases, and attempted to dissuade him from doing so, explaining
 12 that courts disfavor such early Rule 56 motions. See Exh. A. Plaintiff's counsel did not attempt to
 13 negotiate a more reasonable briefing schedule, and instead, filed the motion for summary judgment
 14 at issue just twenty-four hours later. See Exh. B. The date he noticed would require Defendants to
 15 defend themselves before even having an opportunity to answer the Complaint. Thus, Plaintiff
 16 created the situation requiring Defendants to file the instant Rule 56(f) Motion.

17 Plaintiff asks the Court to require Defendants to state with particularity what evidence might
 18 exist that would allow them to defend their claims. Defendants cannot describe what they do not
 19 know, and what they have not been afforded an opportunity to discover. Indeed, at this juncture,
 20 Defendants do not even know how they will respond to the allegations in the Complaint. Plaintiff
 21 is correct in one regard: cases such as the case at hand do not require lengthy discovery schedules.
 22 However, Defendants must be provided an opportunity to investigate and defend against Plaintiff's
 23 claims. See Harris v. City of Seattle, 315 F. Supp. 2d 1112, 1120 (W.D. Wash. 2004)
 24 (characterizing as early a motion filed before defendants had an opportunity to pursue discovery and
 25 obtain necessary defensive evidence).

26 Moreover, Defendants do not ask for an unreasonable amount of time. Defendants have
 27 proposed a schedule that is in accordance with past practice, calculated from the date of the Case
 28 Management Conference, and within the Court's calendar of availability. Plaintiff's proposed

1 schedule denies Defendants the process that is due to them. Defendants have established good cause
2 for extending the hearing schedule.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendants respectfully request the Court to refuse Plaintiff's
5 Motion for Summary Judgment, or continue the hearing date to January 4, 2008.

6 Dated: September 14, 2007

Respectfully submitted,

7 SCOTT N. SCHOOLS
United States Attorney

9 /s/
10 MELANIE L. PROCTOR
Assistant U.S. Attorney

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